

Amendment No. 1 to HB1267

Lundberg
Signature of Sponsor

AMEND Senate Bill No. 1027

House Bill No. 1267*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding
Section 2 through Section 8 as a new, appropriately designated part thereto:

SECTION 2. For purposes of this part:

(1) "Commissioner" means the commissioner of commerce and insurance;
(2) "Customer" means a person who purchases portable electronics or services;
(3) "Department" means the department of commerce and insurance;
(4) "Enrolled customer" means a customer who elects coverage under a portable
electronics insurance policy issued to a vendor of portable electronics;

(5) "Location" means any physical location in the State of Tennessee or any web
site, call center site, or similar location directed to residents of the State of Tennessee;

(6) "Portable electronics" means electronic devices that are portable in nature,
the devices' accessories, and services related to the use of the devices;

(7)

(A) "Portable electronics insurance" means insurance providing coverage
for the repair or replacement of portable electronics which may provide coverage
for portable electronics against any one (1) or more of the following causes of
loss:

- (i) Loss;
- (ii) Theft;
- (iii) Inoperability due to mechanical failure;
- (iv) Inoperability due to malfunction;
- (v) Damage; or

(vi) Other similar causes of loss.

(B) “Portable electronics insurance” does not include:

(i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear;

(ii) A policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or

(iii) A homeowner’s, renter’s, private passenger automobile, commercial multi-peril, or similar policy;

(8) “Portable electronics transaction” means:

(A) The sale or lease of portable electronics by a vendor to a customer;

or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer;

(9) “Supervising entity” means a business entity that is a licensed insurance producer or insurer; and

(10) “Vendor” means a person in the business of engaging in portable electronics transactions directly or indirectly.

SECTION 3.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance. A vendor who has met the requirements of this part shall be entitled to a limited lines business entity producer’s license, without examination, authorizing the vendor to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued to a vendor under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under

a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(c) In connection with a vendor's initial application for licensure and at renewal, the vendor shall provide a list to the commissioner of all locations in this state at which the vendor offers coverage.

(d) Notwithstanding any law to the contrary, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in activities permitted in Section 2 through Section 8 of this act.

SECTION 4.

(a) At every location where portable electronics insurance is offered to customers, brochures or other written materials shall be made available to a prospective customer that:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of any applicable deductible and how it is to be paid;

(D) Benefits of the coverage; and

(E) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements; and

(5) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(b) Notwithstanding any law to the contrary, portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

SECTION 5.

(a) Notwithstanding any law to the contrary, the employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this part provided that:

(1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to Section 3 of this act;

(2) The insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision (a)(2) shall comply with the following:

(A) The training shall be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance;

(B) The training may be provided in electronic form. If the training is conducted in an electronic form the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the supervising entity; and

(C) Each employee and authorized representative shall receive basic instruction concerning the portable electronics insurance offered to customers and the disclosures required under Section 4;

(3) No employee or authorized representative of a vendor of portable electronics shall advertise, represent, or otherwise hold himself or herself out as a non limited lines licensed insurance producer; and

(4) No employee or authorized representative of a vendor shall be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage; provided, however, that the employee or authorized representative may receive compensation for activities under the limited lines license which is incidental to his or her overall compensation.

(b)

(1) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the enrolled customer that the coverage is included with the purchase or lease of the portable electronics or related services.

(2) Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is

authorized by the insurer to hold such funds in a non-segregated account and remits such amounts to the supervising entity within sixty (60) days of receipt.

(3) All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

(4) Vendors may receive compensation for billing and collection services.

SECTION 6. If a vendor of portable electronics or its employee or authorized representative violates this part, the commissioner is authorized to:

(a) After notice and hearing, impose on a person's license pursuant to this act civil penalties not to exceed five hundred dollars (\$500) per violation and five thousand dollars (\$5,000) in the aggregate for such conduct; and

(b) After notice and hearing, impose on a person's license pursuant to this act other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this act, including:

(1) Suspending the privilege of transacting portable electronics insurance pursuant to this act at specific business locations where violations have occurred; and

(2) Suspending or revoking the ability of individual employees or authorized representatives to act under a license issued pursuant to Section 3.

SECTION 7. Notwithstanding any other law to the contrary:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days notice;

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes;

(3) Notwithstanding subdivision (1):

(A) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder; and

(B) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(i) For nonpayment of premium;

(ii) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(iii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer;

(4) If a portable electronics insurance policy is terminated by a policyholder, then the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days prior to the termination; and

(5)

(A) Whenever notice by an insurer is required pursuant to this section, the notice shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer;

(B) If notice is mailed pursuant to this section, then the insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service;

(C) An insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

SECTION 8.

(a) A sworn application for a license under this part shall be made to and filed with the commissioner on forms prescribed and furnished by the department.

(b) The application shall:

(1) Provide the name, residence address, and other information required by the department for an individual that is designated by the applicant as the individual responsible for the vendor's compliance with the requirements of this part. Notwithstanding any other law, the individual required to be designated by the vendor pursuant to this section and § 56-6-106(b)(2) shall not be required to be a principal, officer or employee of the vendor but shall be a principal, officer or employee of the supervising entity who holds a current producer license in this state; and

(2) Provide the location of the applicant's home office.

(c) Applications for licensure under this part may be made within ninety (90) days of the date the application is made available by the commissioner pursuant to this act.

(d) Initial licenses issued pursuant to this part shall be valid for a period of twenty-four (24) months and expire biennially on March 1 of the renewal year assigned by the commissioner.

(e)

(1) Except as provided in subdivision (e)(2), each vendor of portable electronics licensed under this part shall pay to the commissioner a fee as prescribed by the commissioner, but in no event shall the fee exceed one thousand dollars (\$1,000) for an initial portable electronics limited lines license and five hundred dollars (\$500) for each renewal thereof.

(2) The fee prescribed for a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in this state shall not exceed one hundred dollars (\$100) for an initial license and for each renewal thereof.

SECTION 9. Tennessee Code Annotated, Section 56-6-110, is amended by adding the following new appropriately designated subdivision thereto:

() Portable electronics insurance;

SECTION 10. Tennessee Code Annotated, Section 56-6-104(b), is amended by adding the following new appropriately designated subdivision thereto:

() An officer, director, employee, or authorized representative of a business entity engaged in the sale, solicitation, or negotiation of portable electronics insurance licensed pursuant to and acting in compliance with Sections 2 - 8 of this act;

SECTION 11. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 12. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2012, the public welfare requiring it.